

PARTICIPATION AND PURCHASE AGREEMENT Flood Mitigation

This Participation and Purchase Agreement (Flood Mitigation) (the "Agreement"), is executed this ___ day of May, 2015, by and among PRF Flood Mitigation LLC (the "Company"), Purdue Research Foundation ("PRF"), the City of West Lafayette, Indiana (the "City"), and MainSource Bank (the "Bank").

1. Definitions.

Agency shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative, or regulatory body.

Closing shall mean the closing with respect to the Transaction.

Closing Date shall mean the date of the Closing.

Code shall mean the Internal Revenue Code of 1986, as amended, together with the Regulations.

Completion Affidavit shall mean an affidavit of Company stating that the Project has been completed.

Custodial Agreement shall mean that certain Custodial Agreement (Flood Mitigation) of even date herewith executed by and between Company and the Bank or its designee, as "Custodial Agent".

Event of Default shall have the meaning set forth in Subsection 11(a).

Full Prepayment Price shall have the meaning ascribed to such term in the Installment Contract.

Initial Period shall mean the period: (a) beginning on the Closing Date; and (b) ending on the date that is 21 months after the last day of the calendar month in which the Closing Date occurs.

Installment Contract shall mean that certain Installment Purchase Contract (Flood Mitigation) of even date herewith executed by and among Company, PRF, and the City.

Installment Payments shall mean the installment payments payable pursuant to the Installment Contract. The Installment Payments are the "Installment Payments" under the Installment Contract.

IP Principal Amount shall mean, with respect to any given Installment Payment, the amount thereof specified on Exhibit A to the Installment Contract as the "Amount Attributable to Principal". The IP Principal Amount is the "IP Principal Amount" under the Installment Contract.

Law shall mean any applicable federal, state, or local law, statute, ordinance, rule, or regulation, or any order or decree of any Agency.

Outstanding IP Principal Amount shall mean, as of any given date, the aggregate outstanding IP Principal Amount. The Outstanding IP Principal Amount is the "Outstanding IP Principal Amount" under the Installment Contract.

Payment Period shall mean the period over which the Payment Rights Price shall be paid, as set forth in the Installment Contract. The Payment Period is the "Payment Period" under the Installment Contract.

Payment Rights shall mean the rights under the Installment Contract with respect to the receipt of the Installment Payments. The Payment Rights are the "Payment Rights" under the Installment Contract.

Payment Rights Price shall mean the amount of \$4,000,000.00.

PRF Account shall mean an account maintained by PRF with the Bank.

Project shall mean the project to be constructed by Company pursuant to, and in accordance with, the Project Agreement.

Project Agreement shall mean that certain Project Agreement (Flood Mitigation) of even date herewith executed by and between Company and PRF.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including: (a) the costs to draft and negotiate this Agreement, the Project Agreement, the Installment Contract, and any other documents contemplated by any of the foregoing; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 of the Project Agreement have been satisfied and/or will be waived by Company; (c) the costs incurred in connection with the closing of the Transaction and the purchase of the Payment Rights (to the extent that such costs are not included in Subsection (a) of this definition); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of the Project Agreement; and (e) the fee to be paid to Developer.

Project Fund shall mean a separate and dedicated account established by the Bank: (a) for the benefit of Company from which disbursements shall be made to Company to pay Project Costs; and (b) for the benefit of PRF, from which funds shall be drawn by the Bank and applied to satisfy the obligation of PRF to pay Installment Payments during the Initial Period.

Regulations shall mean the United States Treasury Regulations in effect with respect to the Internal Revenue Code of 1986, as amended.

Special Tax Counsel shall mean Frost Brown Todd, LLC, or any firm of attorneys that is: (a) of nationally-recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions; and (b) admitted to practice law before the highest court of any state of the United States of America.

Transaction shall mean the sale and assignment of the Payment Rights to the Bank, as the "Payment Rights Purchaser" under the Installment Contract.

Transaction Proceeds shall mean the proceeds of closing of the Transaction.

2. Sale/Assignment. Subject to the terms and conditions of this Agreement, Bank shall purchase from Company, and Company shall sell and assign to Bank, the Payment Rights for the Payment Rights Price. The Transaction Proceeds shall be used by Company to fund the Project Costs.

3. Closing.

(a) The Closing shall occur on or before May 31, 2015, with the Closing Date to be determined by the parties. At the Closing: (i) fully executed copies of this Agreement, the Project Agreement, the Installment Contract, the Custodial Agreement, and any other documents reasonably determined by Company, PRF, the City, and/or the Bank to be necessary to consummate the Transaction shall be delivered to each of Company, PRF, the City, and the Bank; (ii) the Bank shall establish the Project Fund; (iii) the Bank shall disburse a portion of the Payment Rights Price in accordance with Exhibit A, as the same may be modified to contemplate additional Closing disbursements approved by Company and the Bank; and (iv) the Bank shall deposit the Payment Rights Price, less the amount disbursed in accordance with Exhibit A, into the Project Fund for disbursement in

accordance with the terms and conditions of this Agreement and the Custodial Agreement.

(b) From and after the Closing: (i) this Agreement shall constitute a complete sale, assignment, and transfer by Company of the Payment Rights to the Bank; and (ii) the Installment Contract shall be deemed to be registered in the name of the Bank. If the Bank sells or assigns any of its right, title, and/or interest in or to the Payment Rights to any other entity, then the Bank shall: (i) give written notice thereof to PRF and the City; and (ii) obtain an agreement from the assignee, enforceable against the assignee by PRF and the City, that it will give written notice to PRF and the City of any subsequent sale or assignment of the assignees interest in the Payment Rights.

4. Payments.

(a) For so long as the Bank is the owner of the Payment Rights: (i) the Bank shall deliver the notices required to be delivered to PRF pursuant to Subsection 7(b)(ii) of the Installment Contract; and (ii) PRF shall pay all Installment Payments (and, if applicable, the Full Prepayment Price) to the Bank either: (A) at the address for the Bank set forth in Section 13 on or before the due date; or (B) by delivering to the Bank written notice, at least five business days in advance of the payment due date, authorizing the Bank to withdraw the amount of the Installment Payment from a PRF Account; provided that, notwithstanding anything to the contrary set forth herein, in the Custodial Agreement, or in the Installment Contract, all Installment Payments payable by PRF during the Initial Period shall be withdrawn by the Bank from the Project Fund and applied to satisfy the obligation of PRF to pay such Installment Payments. For purposes of clarity, PRF shall not have any obligation to provide any funds to pay any Installment Payments during the Initial Period, as all such funds shall be withdrawn by the Bank from the Project Fund. All Installment Payments not authorized to be withdrawn by the Bank directly from a PRF Account shall be paid in lawful money of the United States of America, in immediately available funds at the place of payment, without setoff, counterclaim, or deduction.

(b) The Bank understands and agrees that: (i) the obligations of the City under the Installment Contract with respect to the Installment Payments are special and limited obligations of the City (and, accordingly, are not corporate obligations or indebtedness of the City) payable solely from the Installment Payments paid by PRF or withdrawn by the Bank from the Project Fund; and (ii) accordingly, payment of the Installment Payments is the obligation of PRF.

5. Company Representations. Company represents and warrants as follows:

(a) Company is a limited liability company organized and existing under the laws of the State of Indiana;

(b) Neither the execution and delivery of this Agreement by Company, nor the performance by Company of its obligations hereunder: (i) violates any Law or any indenture, material agreement, or other instrument to which Company is a party, or by which it or any of its properties or assets is bound; (ii) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (iii) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of the properties or assets of Company;

(c) Company has: (i) the power and authority to enter into, and perform its obligations under, this Agreement and the Installment Contract; (ii) the power and

authority to carry out all transactions contemplated by this Agreement and the Installment Contract; and (iii) complied with the Laws in all matters relating to the Transaction;

(d) Company has: (i) taken all actions necessary to authorize the execution, delivery, and performance of its obligations under this Agreement and the Installment Contract; and (ii) been authorized by proper action to execute, deliver, and perform its obligations under this Agreement and the Installment Contract;

(e) This Agreement and the Installment Contract, when executed and delivered by Company, each will be the valid and binding obligation of Company; provided that the enforceability of the foregoing may be subject to: (i) Laws relating to bankruptcy, insolvency, reorganization, moratorium, or other similar subjects; (ii) the exercise of judicial discretion in appropriate cases; and/or (iii) general principles of equity;

(f) No litigation is pending or, to the knowledge of Company, threatened: (i) seeking to restrain or enjoin: (A) the Transaction; or (B) the application of the Transaction Proceeds to pay Project Costs; (ii) in any way contesting or affecting: (A) any authority for the consummation of the Transaction; or (B) the validity of this Agreement, the Installment Contract, or the Transaction; or (iii) in any other manner contesting the existence or powers of Company; and

(g) During the last five years, Company has not been in default beyond any applicable cure periods in the payment of principal or interest due and payable with respect to any obligations issued or guaranteed by Company, or with respect to which Company is an obligor.

6. PRF Representations. PRF represents and warrants as follows:

(a) PRF is an Indiana corporation formed and existing under the Indiana Foundation or Holding Companies Act, Acts of 1921, ch. 246, and an organization described in Section 501(c)(3) of the Code;

(b) Neither the execution and delivery of this Agreement by PRF, nor the performance by PRF of its obligations hereunder: (i) violates any Law or any indenture, material agreement, or other instrument to which PRF is a party, or by which it or any of its properties or assets is bound; (ii) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of the properties or assets of PRF;

(c) PRF has: (i) the power and authority to enter into, and perform its obligations under, this Agreement and the Installment Contract; (ii) the power and authority to carry out all transactions contemplated by this Agreement and the Installment Contract; and (iii) complied with the Laws in all matters relating to the foregoing transactions;

(d) PRF has: (i) taken all actions necessary to authorize the execution, delivery, and performance of its obligations under this Agreement and the Installment Contract; and (ii) been authorized by proper action to execute, deliver, and perform its obligations under this Agreement and the Installment Contract;

(e) This Agreement and the Installment Contract, when executed and delivered by PRF, will be the valid and binding obligation of PRF; provided that the enforceability of the foregoing may be subject to: (i) Laws relating to bankruptcy, insolvency,

reorganization, moratorium, or other similar subjects; (ii) the exercise of judicial discretion in appropriate cases; and/or (iii) general principles of equity;

(f) No litigation is pending or, to the knowledge of PRF, threatened: (i) seeking to restrain or enjoin: (A) the Transaction; or (B) the application of the Transaction Proceeds to pay Project Costs; (ii) in any way contesting or affecting: (A) any authority for the consummation of the Transaction; or (B) the validity of this Agreement, the Installment Contract, or the Transaction; or (iii) in any other manner contesting the existence or powers of PRF;

(g) During the last five years, PRF has not been in default beyond any applicable cure periods in the payment of principal or interest due and payable with respect to any obligations issued or guaranteed by PRF, or with respect to which PRF is an obligor;

(h) There has been no material adverse change in the financial condition of PRF from that shown in the most recent financial statements of PRF that have been delivered to the Bank; and

(i) There is no litigation or governmental proceeding pending or, to the knowledge of PRF, threatened against PRF or any of its property that, if adversely determined, would have a material adverse effect on the financial condition of PRF.

7. City Representations. The City represents and warrants as follows:

(a) Neither the execution and delivery of this Agreement by the City, nor the performance by the City of its obligations hereunder: (i) violates any Law or any indenture, material agreement, or other instrument to which the City is a party, or by which it or any of its properties or assets is bound; (ii) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of the properties or assets of the City;

(b) The City has: (i) the power and authority to enter into, and perform its obligations under, this Agreement and the Installment Contract; (ii) the power and authority to carry out all transactions contemplated by this Agreement and the Installment Contract; and (iii) complied with the Laws in all matters relating to the foregoing transactions;

(c) The City has: (i) taken all actions necessary to authorize the execution, delivery, and performance of its obligations under this Agreement and the Installment Contract; and (ii) been authorized by proper action to execute, deliver, and perform its obligations under this Agreement and the Installment Contract;

(d) This Agreement and the Installment Contract, when executed and delivered by the City, will be the valid and binding obligation of the City; provided that the enforceability of the foregoing may be subject to: (i) Laws relating to bankruptcy, insolvency, reorganization, moratorium, or other similar subjects; (ii) the exercise of judicial discretion in appropriate cases; and/or (iii) general principles of equity; and

(e) No litigation is pending or, to the knowledge of the City, threatened: (i) seeking to restrain or enjoin: (A) the Transaction; or (B) the application of the Transaction Proceeds to pay Project Costs; (ii) in any way contesting or affecting: (A) any authority for the consummation of the Transaction; or (B) the validity of this Agreement, the Installment

Contract, or the Transaction; or (iii) in any other manner contesting the existence or powers of the City.

8. Consents/Covenants.

(a) Each of PRF and the City consents to the sale and assignment of the Payment Rights to the Bank;

(b) PRF shall comply with all Laws (including without limitation environmental laws), in connection with equipping and operating the completed Project;

(c) Each of Company, PRF, and the City shall comply with all of its obligations under the Installment Contract. PRF shall pay the Installment Payments directly to the Bank on or before the applicable due date, as required pursuant to (and subject to) Section 4;

(d) PRF shall maintain, preserve and keep the completed Project in good repair, working order and condition (ordinary wear and tear excepted);

(e) PRF shall maintain insurance with respect to the completed Project, which insurance shall have coverages that are customary in the area with respect to the operation of projects similar to the Project;

(f) PRF shall permit the Bank to: (i) inspect the completed Project; and (ii) examine and make copies of books and records with respect to the Project; at such times as the Bank may reasonably request; provided that the Bank shall conduct its inspections and examinations in such a manner as to minimize disruptions to the business operated in the completed Project.

(g) Promptly after knowledge thereof has come to the attention of PRF, PRF shall provide to the Bank written notice of: (i) any Event of Default; (ii) any litigation or governmental proceeding pending or threatened against PRF, or any property of PRF, that, if adversely determined, would have a material adverse effect on the financial condition of PRF; or (iii) any event that has a material adverse effect on the financial condition of PRF;

(h) For each fiscal year, PRF shall provide to the Bank audited financial statements, which financial statements shall be provided on or before the date that is 120 days after the end of the applicable fiscal year, and, upon receipt of written request, PRF shall provide to the Bank such other financial information as the Bank reasonably may request; and

(i) Until such time as the Outstanding IP Principal Amount, together with all interest that has accrued thereon and remains unpaid, has been paid in full, Company shall maintain its primary operating deposit accounts with the Bank.

9. Conditions. The obligation of the Bank to proceed to the Closing is subject to the satisfaction, or waiver in writing, as of the Closing Date of the conditions set forth in this Section.

(a) The Bank shall have approved the form of the Installment Contract; provided that, if the approved Installment Contract is executed prior to the Closing, then, on the Closing Date, the Installment Contract shall: (i) be in full force and effect; and (ii) not have been amended without the prior written consent of the Bank.

(b) No general banking moratorium shall have been declared by authorities of the United States of America or the State of Indiana.

(c) The Bank shall have received an opinion from the Special Tax Counsel, dated the Closing Date, which opinion shall be: (i) addressed to the Bank, or accompanied by a letter from Special Tax Counsel that is addressed to the Bank and specifies that the Bank may rely on such opinion; and (ii) in form and substance acceptable to the Bank.

(d) The Bank shall have received an opinion from Wallack Somers & Haas P.C., as counsel to Company, which opinion shall be: (i) dated the Closing Date; (ii) addressed to the Special Tax Counsel, PRF, the City, Company, and the Bank; and (iii) in form and substance acceptable to the Bank.

(e) The Bank shall have received an opinion from counsel to PRF, which opinion shall be: (i) dated the Closing Date; (ii) addressed to Special Tax Counsel, PRF, the City, Company, and the Bank; and (iii) in a form and substance acceptable to the Bank.

(f) The Bank shall have received an opinion from counsel to the City, which opinion shall be: (i) dated the Closing Date; (ii) addressed to Special Tax Counsel, PRF, the City, Company, and the Bank; and (iii) in a form and substance acceptable to the Bank.

(g) The Bank shall have received from each of PRF and the City:

(i) a certificate, executed by an authorized officer and dated the Closing Date, stating that the representations and warranties of PRF or the City, respectively, set forth herein and in the Installment Contract are true and correct in all material respects as of the Closing Date; and

(ii) certified copies of the resolutions and/or approvals enacted and/or obtained by PRF and the City authorizing the execution and delivery of all documents to be executed and delivered by PRF or the City, as applicable, in connection with the Transaction, which certification shall state that such resolutions and/or approvals remain in full force and effect without amendment.

(h) The Bank shall have received from Company:

(i) a certificate, executed by an authorized Member and dated the Closing Date, stating that the representations and warranties of Company set forth herein and in the Installment Contract are true and correct in all material respects as of the Closing Date;

(ii) certified copies of the resolutions and/or approvals enacted and/or obtained by Company authorizing the execution and delivery of all documents to be executed and delivered by Company in connection with the Transaction, which certification shall state that such resolutions and/or approvals remain in full force and effect without amendment; and

(iii) copies of the Articles of Organization, Operating Agreement, and Certificate of Existence of Company.

- (i) The Bank shall have received such additional documentation as counsel for the Bank or the Special Tax Counsel reasonably may request to: (i) evidence compliance with all Laws; or (ii) provide further assurances to the Bank.

If any of the foregoing conditions are not satisfied, or waived in writing, on the Closing Date, then the Bank may terminate this Agreement by delivery of written notice to Company, PRF, and the City.

10. Disbursements.

- (a) The funds on deposit in the Project Fund shall be disbursed to, or on behalf of, Company in accordance with the Custodial Agreement to pay Project Costs.
- (b) Upon completion of the Project in accordance with the Project Agreement such that no further disbursements from the Project Fund will be needed in connection with the construction of the Project, Company will provide the Completion Affidavit to the Bank.
- (c) After receipt of the Completion Affidavit, any funds remaining in the Project Fund shall be applied by the Bank to the next due Installment Payments.
- (d) Except to the extent set forth in this Section, none of PRF, the City, or the Bank shall have any responsibility for ensuring that the funds on deposit in the Project Fund are used in the proper manner.

11. Defaults/Remedies.

- (a) Each of the following shall constitute an "Event of Default":
 - (i) A material misrepresentation by Company, PRF, or the City hereunder or under the Installment Contract;
 - (ii) Any failure by PRF to pay an Installment Payment when due; provided that, it shall not be an Event of Default if such failure is due to the failure of the Bank to withdraw the amount of the Installment Payment: (A) from the Project Fund, in the case of Installment Payments due during the Initial Period; or (B) from a PRF Account after authorized by PRF to do so in accordance with Subsection 4(a);
 - (iii) Any other "Event of Default" by PRF under the Installment Contract;
 - (iv) Commencement of any voluntary or involuntary bankruptcy or similar proceeding against PRF;
 - (v) PRF becomes insolvent or generally is unable to pay its debts as they become due; and/or
 - (vi) A receiver is appointed for a substantial portion of the property of PRF.
- (b) Company, PRF, and the City agree that, during the continuance of an Event of Default, the Bank shall have the right to exercise any right or remedy available to Company under the Installment Contract as a result of an "Event of Default" under the Installment Contract.

12. Indemnification. To the extent permitted by the Laws, Company and PRF shall indemnify and hold harmless the Bank from and against any and all claims, judgments, liabilities, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from, or connected with: (a) the consummation of the Transaction; and/or (b) the breach by Company and/or PRF, respectively, of any term or condition to be observed or performed by it pursuant to this Agreement, the Installment Contract, and/or the Project Agreement. The foregoing indemnifications shall survive the termination of this Agreement.

13. Notice. Any notice or approval required or permitted to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Company at 8561 N. 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz, with a copy to: Jennifer R. Shoup, Esq., Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; to PRF at 1281 Win Hentschel Blvd, West Lafayette, Indiana 47906-4182, Attn: President, with a copy to David A. Starkweather, Esq., Stuart & Branigin LLP, P.O. Box 1010, 300 Main Street, Suite 900, Lafayette, Indiana 47902; to the City at 711 West Navajo Street, West Lafayette, Indiana 47906, Attn: Finance; and to the Bank at 11 South Meridian Street, Suite 101, Indianapolis, Indiana 46204, Attn: Dan Cobb, with a copy to Jerimi Ullom, Esq., Hall Render, Killian, Heath & Lyman, P.C., One American Square, Suite 2000, Box 82064, Indianapolis, Indiana 46282. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

14. Miscellaneous. This Agreement: (a) shall be binding upon, and shall inure to the benefit of, the Company, PRF, the City, and the Bank, and no person or entity shall be deemed to be a third-party beneficiary hereof; (b) shall be governed by the laws of the State of Indiana; and (c) may be executed in counterparts, each of which shall constitute an original, but all of which together shall be a single instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

PRF FLOOD MITIGATION LLC

By: GM Development Companies LLC

By: _____
Gregory W. Martz, Member

PURDUE RESEARCH FOUNDATION

By: _____

Printed: _____

Title: _____

THE CITY OF WEST LAFAYETTE,
INDIANA

By: _____
John R. Dennis, Mayor

Attest: _____
Judith C. Rhodes, Clerk-Treasurer

MAINSOURCE BANK

By: _____

Printed: _____

Title: _____

EXHIBIT A

Purchase Price \$4,000,000.00

DISBURSEMENT OF PROCEEDS

<u>Item Number</u>	<u>Payee Name and Address</u>	<u>Purpose of Obligation</u>	<u>Amount</u>
1	[PROJECT FUND]	Project Costs Funding	\$_____
2	MainSource Bank	Bank Fee	\$13,000.00
3	Wallack Somers & Haas, PC One Indiana Square, Suite 2300 Indianapolis, IN 46204	Company Counsel Fees	\$_____
4	Frost Brown Todd, LLC	Special Tax Counsel Fees	\$_____
5	GM Development Companies LLC	Fee	\$120,000.00
6	Purdue Research Foundation	Fee	\$120,000.00
7	Hall, Render, Killian, Heath & Lyman, P.C.	Bank Counsel Fees	\$15,000.00